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THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D. C. 20505

17 JUL 1978

Pro/Leg

Office of Legislative Counsel

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Jim:

Enclosed are proposed views on sections 108, 119 and 501 of H.R. 12598, the "Foreign Relations Authorization Act of 1979," as passed by the Senate on 28 June 1978. These views reflect the position of the Director, and it is requested that they be included in the Administration report to the House-Senate conferees which I understand is now under preparation by your office.

I have not included specific views on Title V of the bill as passed by the House, "Science, Technology, and American Diplomacy," as I understand the Administration intends to oppose enactment of this title. The Director opposes enactment of this title; were the Administration not to oppose generally this title, we would want the report to the conferees to recommend amendatory language, and proposed congressional report language, to make clear that intelligence activities are not covered by the title. This would be consistent with our understanding of the intended scope of the title.

The enclosed views opposing enactment of section 119 reflect the views of the President on this matter; the views on section 501 are, as I understand it, consistent with discussions between CIA, State, Defense, and OMB; and, insofar as these discuss matters raised in the 28 June 1978 letter from Assistant Secretary of State Bennet to Senator Sparkman, they are consistent therewith. As to certain points, I have added material specifically addressing intelligence equities in this legislation, which I believe is necessary. Since section 108 was adopted as an unprinted floor amendment in the Senate, there is not yet an Administration position on record.

We stand ready to assist in the preparation of the final report to the conferees on these issues of concern to the Director.

Sincerely,

SIGNED

Frederick P. Hitz
Legislative Counsel

Enclosures

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SECTION 108--"CLARIFICATION OF INFORMATION REPORTING REQUIREMENT"

Section 108 of H.R. 12598, added as an unprinted floor amendment during the Senate consideration of the bill, is unnecessary and could prove counterproductive, and the Administration recommends against its inclusion in this legislation. In the first place, this provision, which would amend subsection 15(b) of the Department of State enabling statute (70 Stat. 890), is unnecessary because it does not give the foreign affairs committees any further right to information within their jurisdiction than they now possess. Secondly, the addition of the language "... (notwithstanding the department, agency, or independent establishment of origin)..." to subsection 15(b) of 70 Stat. 890 could prove counterproductive as it may inhibit the free flow of information between Executive agencies, since the language of the amendment would seem to require that the originating agency foresake all control over that information once it is provided to another agency. In such a situation, the important step of allowing an originating agency to ensure that its information in the possession of another agency is placed in the context of other related or background information before release to a third party would no longer be available.

Presently, the foreign affairs committees of each House of Congress may have access to information within their jurisdiction. There would seem to be no burden in the current procedure of ensuring that information in the possession of a non-originating agency is cleared through the originating agency before transmittal to these committees. In fact, such procedure is, in the view of the Administration, entirely appropriate and efficient, and constitutes a proper consideration from the standpoint of inter-agency exchanges of information. The current procedures are in no way inconsistent with the intent behind enactment of subsection 15(b) of 70 Stat. 890--to ensure that the foreign affairs committees have access to information within their jurisdiction--and there is therefore no need to amend the provision as proposed by section 108 of H.R. 12598; no clarification of the law is needed.

The Administration opposes section 108.

SECTION 119--"AUTHORITY AND RESPONSIBILITY OF UNITED STATES CHIEFS OF MISSION"

The Administration opposes section 119 of H.R. 12598 insofar as the section would amend 22 U.S.C. 2680a--the so-called "Role of the Ambassador Legislation"--by inserting the words "notwithstanding any other provision of law" therein.

The U.S. Ambassador, as the President's representative in a foreign country, should necessarily receive whatever information necessary to carry out his mission, as the President directs. Thus, 22 U.S.C. 2680a is prefaced by the proviso, "Under the direction of the President." While this prefatory proviso would remain unchanged, the addition of the words "notwithstanding any other provision of law" could be construed to mean that the President's authority to determine what information should be disclosed to an Ambassador would become ministerial only rather than discretionary.

The Administration opposes legislation such as section 119 of H.R. 12598 which could have the effect of limiting Presidential discretion implementing this statutory directive, or of overriding other statutory limitations on disclosures of information (e.g., the Privacy Act). So long as such other statutes, including paragraph 102(d)(3) of the National Security Act of 1947, as amended (50 U.S.C. 403), are not in conflict with 22 U.S.C. 2680a--and there has been no evidence of this--there is no need to adopt an amendment to that statute which presumes to correct such conflicts. (Notwithstanding the language in the Senate Report that would indicate there are problems in the provision of CIA information to U.S. Ambassadors and that the amendment to 22 U.S.C. 2680a therefore is necessary to correct this, there are in fact no problems of this sort.)

In the view of the Administration, the current prefatory proviso to 22 U.S.C. 2680a affords the proper statutory framework in which U.S. Ambassadors are to be kept informed of activities in their country of responsibility by U.S. agencies and departments. Also, insofar as section 119 of H.R. 12598 would have the effect of superseding other statutory directives limiting disclosure of information, the Administration opposes its enactment. Furthermore, in the view of the Administration, there are no ambiguities or uncertainties as regards 22 U.S.C. 2680a that require clarification.

Finally, insofar as the language proposed by section 119 would require that information could be withheld from a U.S. Ambassador only on the express direction of the President in each and every particular instance, this would be unnecessarily burdensome and operate as an unacceptable limitation on the President's discretion to determine the manner in which his representatives abroad are to be kept informed.

The Administration opposes enactment of section 119(2) of H.R. 12598.

SECTION 501--"REPORTING AND COORDINATION OF INTERNATIONAL AGREEMENTS"

Subsection 501(a) of H.R. 12598 would amend 1 U.S.C. 112b--the so-called "Case-Zablocki Act"--by requiring that "oral agreements" be reduced to writing and reported pursuant to the terms of the Act. Such a provision in statute would be extremely and unacceptably burdensome in practice. This problem would result from the difficulty inherent in determining what activities or arrangements must be reduced to writing, and from the fact that the numbers of such matters that would have to be so considered would be extremely large. Pursuant to the terms of the Case-Zablocki Act, all international agreements are presently reported to the Congress. Requiring additional statutory burdens, by way of a provision that would be extremely difficult if not impossible to enforce, is simply not necessary.

These practical burdens are of concern generally but would be particularly troublesome in the area of intelligence activities involving liaison with foreign intelligence and security services, which are among the most sensitive of intelligence activities. A statutory provision, such as proposed by subsection 501(a), that could result in expanded dissemination of this sensitive intelligence information, would cause the intelligence and security services of foreign governments to reexamine their willingness to deal with the U.S. This could result in a substantial diminution in the Government's ability to obtain essential foreign intelligence.

The Administration also opposes those provisions of subsections 501(b) and (c) of H.R. 12598, that would, respectively, require the President to report annually to the Congress the reasons for late transmittals of international agreements, and require that no agreement could be concluded without the prior approval of the Secretary of State or the President. Requiring the prior approval of every agreement, no matter how insignificant, by the Secretary of State is impractical, inappropriate and unnecessary. Accordingly, the Administration recommends deletion of subsection 501(c), or, at a minimum, substitution of the words "consultation with" for the words "approval of" in the proposed subsection 112(c)(1)(A) of Title I of the United States Code, and revision of subsection 112(c)(1)(B) to read: "Such consultation may encompass a class of agreements rather than particular agreements." In addition, the Administration recommends that the following language be added to proposed subsection 112(c)(1)(A), immediately following the words "... no international agreement...": "... of significance to the coherent and effective conduct of foreign policy..."

Subsection 501(b), requiring that the President report annually the reasons for late transmittal by the State Department of international agreements, is not necessary. Reasons for late transmittals are regularly transmitted to the Congress by the Assistant Legal Advisor for Treaty Affairs of the Department of State. This provision will not provide additional information to the Congress, and the President should not be burdened with a task that is already being performed and which is of a routine nature.

Finally as to section 501, the Administration sees no need to require, as would subsection 501(d), that rules and regulations to implement 1 U.S.C. 112b be promulgated by the President "through the Secretary of State." The President, in promulgating rules and regulations to implement a statutory directive, should retain the prerogative to promulgate those rules and regulations through such of his officers as he deems appropriate, without statutory specification.

For these reasons, the Administration opposes enactment of section 501 of H.R. 12598, in its present form.